IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.04.2007

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE T.SUDANTHIRAM

CRL.APP.NO.121 OF 2006

Srinivasan ..Appellant/Accused

Vs.

State by Inspector of Police
Mecheri Police Station
Salem
Crime No.453/2003 ..Respondent/Complainant

Prayer: Criminal appeal against the judgment dated 06.10.2005 passed by the learned District Sessions Judge, Salem in S.C.No.126/2005.

For Appellant : Mr.V.Sairam
For Respondent : Mr.N.R.Elango, APP

JUDGMENT

(Judgment of the court was delivered by
Justice R.Balasubramanian)

The appellant in this appeal stands convicted in S.C.No.126/2005 on the file of the Court of Sessions, Salem under section 302 I.P.C., for which, he stands sentenced to undergo imprisonment for life together with a fine of Rs.1,000/-, carrying a default sentence. Hence he is before this court in this appeal. Heard Mr.V.Sairam, learned counsel appearing for the appellant and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the State.

2. The prosecution case is that the accused murdered his wife at about 8.30 a.m on 21.07.2003 when she was in her mother's house (P.W.1) and therefore triable under section 302 I.P.C. To prove their case, the prosecution examined P.Ws.1 to 14 besides marking Exs.P.1 to P.35 and M.Os.1 to 12. The defence neither let in any oral nor documentary evidence. P.W.1 is the mother of the deceased. P.W.2 is the minor daughter of the accused and the

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deceased. Incidentally, P.W.1 is the mother-in-law of the accused. The marriage between the accused and Kanthamani (since deceased) took place some time before. After marriage, the accused settled down in the same area where P.W.1 was living. The accused was not gainfully employed and he was a time waster. Often he used to beat his wife to get money from her parents. With great difficulty, P.W.1 used to give money to her. But yet, the accused went on assaulting her and chased her out of the house. This made Kanthamani to come to the house of P.W.1. P.W.1 brought that fact to the notice of the panchayatdars. A decision was taken in the panchayat and the accused was not willing to abide by the decision of the panchayat. Again the deceased was complaining to P.W.1 that her husband goes on assaulting her. Therefore a complaint was given in the All Women Police Station at Mecheri. Two years prior to the occurrence, the accused hit P.W.1 with a rice pounder. Aggrieved over that, she also gave a complaint. The accused also assaulted her. On that occurrence also, a complaint was given. The accused was arrested and then he came out on bail. Two months after that incident, the victim was lying in a cot in the house of P.W.1. The accused came there and wanted her to follow to his house. The victim refused and she went on dressing her hair. The accused removed a koduval concealed in his hip and then cut on his wife's neck. P.W.1 was washing vessels at that time. P.W.2, who was standing outside, shouted. After the victim fell down on the cot after receiving the injury, the accused cut her again and made good his escape. P.Ws.4 and 5 came and saw the dead body. Then the local leader came and asked P.W.1 as to what happened. P.W.1 told him as to what happened. P.W.1 then proceeded to the Investigating Police Station where, he narrated a complaint, which was reduced into writing, in which, her signature was taken after it was read over to her. Ex.P.1 is the said complaint. M.O.1 is the weapon of offence. P.W.1 was examined by the Magistrate under section 164 of the Code of Criminal Procedure. Ex.P.2 is her statement.

3. P.W.2 is a child witness aged about 13 years on the day when she was examined in court. Therefore she would have been aged 11 years on the date of the incident. The learned trial Judge questioned her to satisfy himself about the competency of this witness to depose in court. After arriving at such a satisfaction, he proceeded to examine her. P.W.2 would state that at 8.30 a.m on the occurrence day, she was in her grandmother's house (P.W.1). At that time her father (accused) came there and called her mother. Her mother refused to go. Immediately, her father, removing the koduval concealed in his hip, cut her mother on her neck. P.W.1 was washing the vessels. The accused made good his escape. P.W.1 went to the police station to give a complaint. Ex.P.3 is the statement recorded by the Magistrate. P.Ws.4 and 5 are nearby neighbours. They knew

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the accused and the deceased. They also knew about the quarrel between the accused and the deceased. However, P.W.4 would state that he along with P.W.5 went to the house of P.W.3 and told him as to what happened. Ex.P.4 is his statement recorded by the Judicial Magistrate. P.W.5 would give details about the unhappy life of the deceased with the accused. He would state that on the occurrence day he was sitting in the house of P.W.4 and talking to him. At that time, they heard some commotion and when they went out to see what is happening, they saw the victim lying dead. P.Ws.4 and 5 went to the house of P.W.3 to inform him as to what happened. Ex.P.5 is his statement recorded by the Magistrate under section 164 of the Code. P.W.3 is a local leader, who knows the accused and the deceased. However, he does not know the inner details of the quarrel between the accused and the deceased. At 9.00 a.m on the occurrence day, two persons came from M.G.R.Nagar and told him that Kanthamani (victim in this case) had been murdered. However, he does not remember as to who those two persons are. Immediately, P.W.3 went to the crime scene after sending an information to the Village Administrative Officer through a person. He did not enter the crime scene to observe what is there. He also did not notice whether P.W.1 was present there or not. He would then depose that on an earlier occasion he mediated between the accused and the deceased over a quarrel between them. At that stage he was treated as hostile since, he did not support the prosecution case that on 21.07.2003 when he was in the bus stop, the accused made an open declaration that he had killed his wife.

4. P.W.12 is the Sub-Inspector of Police, before whom, at 9.45 a.m on 21.07.2003, P.W.1 appeared along with P.W.3 and narrated a complaint, which he registered. Then, P.W.12 read it over to her and then got her signature in it. He got it attested by P.W.3. Then he registered that complaint as Ex.P.1 in Crime No.453/2003 under section 302 I.P.C. Ex.P.30 is the printed first information report. He served a copy of Ex.P.30 to P.W.1 under her acknowledgement. Ex.P.31 is the signature of P.W.3 in the first information report. He sent the express records to the court as well as to the higher officials. P.W.13 is the Investigating Officer, who, on receipt of the information over wireless at about 11.30 a.m on 21.07.2003, proceeded to the police station and collected the express records at 12.30 p.m on that day. He commenced investigation by proceeding to the crime scene and in the presence of P.W.6 and another, he prepared Ex.P.6, the observation mahazar and Ex.P.32, the rough sketch. Between 2.00 and 2.30 p.m from the crime scene he recovered blood stained earth, sample earth, a blood stained blouse, a blood stained plastic bag and a portion of blood stained rope cot under a mahazar attested by witnesses. From 2.30 p.m till 6.30 p.m on that day, he conducted inquest over the dead body in the presence of panchayatdars and witnesses. During inquest he

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examined P.Ws.1 to 5 and others by recording their statements. Ex.P.33 is the inquest report. At 6.30 p.m on that day he sent the dead body to the Government Head Quarters Hospital at Mettur for post mortem.

5. P.W.10 is the duty Doctor in the Government Hospital at Salem. On receipt of the dead body along with Ex.P.21 (requisition), he commenced post mortem on the dead body at 11.30 a.m on 22.07.2003. During post mortem, he found various symptoms as noted by him in Ex.P.17, the post mortem report. The symptoms noted by him are as hereunder:

"External Injury:

1. A lacerated injury 2 x 5 cms over the right jaw 2 cm below the right ear lobe.
2. A lacerated injury 6 x 1 cm just 1 cm below injury No.1.
3. A contusion about 5 x ½ cm over 2 cm below injury No.2.
4. A contusion about 8 x 4 cm over the centre of the neck 8 cm below the chin, crossing laterally 9 cms length to the right side.
5. A lacerated cut injury 12 x 10 x 5 cms over the back of the neck and right side of neck exposing blood vessels, muscles and tendons with fracture of 2nd cervical vertebra.

Internal Examination:

Hyoid bone preserved; Heart – weight 300 gms. Chambers empty. Lungs – weight 450 gms right side; 400 gms left side; CS – pale; Liver – 100 gms; CS – pale. Stomach – empty; Intestine – empty; Kidney – each 90 gms; CS – pale; Spleen – 90 gms; CS – pale; Bladder – empty; Uterus cavity – empty normal; Skull – No fracture; Membranes – intact; Brain – 1000 gms; CS – pale."

Ex.P.18 is the viscera report, which shows that no poison was detected. Ex.P.20 is the report on the hyoid bone, which shows that the hyoid bone was intact. The Doctor opined that the deceased would appear to have died 25 to 29 hours prior to autopsy as a result of shock and haemorrhage due to damage to vital organs and a weapon like M.O.1 would have caused the injuries found on the deceased.

6. P.W.13 was continuing the investigation by examining witnesses and recording their statements. He recovered M.Os.7 to 10 removed from the dead body by the constable present during

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post mortem and handed over to him under Form 95. At about 8.30 a.m on 23.07.2003 when P.W.13 was on duty, the accused surrendered in the police station on his own. The Sub-Inspector of Police present in the police station on duty identified the accused. The accused, on his own, gave a voluntary confession statement, which was reduced into writing in the presence of witnesses. Ex.P.8 is the admissible portion of the confession statement of the accused. The accused was given a change dress before his blood stained clothes were recovered. They are M.Os.11 and 12. The accused took the police party and the witnesses, pursuant to his statement, to a secluded place, from where, he produced the weapon of offence. The accused and the case properties were brought to the police station and the accused was sent for judicial remand. The case properties were sent to the court with a requisition to subject the same for chemical examination.

7. P.W.13 had also taken steps to have the witnesses examined under section 164 of the Code of Criminal Procedure. P.W.11 is the Magisterial Clerk, who speaks about the receipt of the case properties along with Exs.P.22 to P.24 (requisitions) given by the Inspector of Police. As an enclosure to Exs.P.25 to P.27, the case properties were sent to the laboratory. Exs.P.28 and P.29 are the chemical examiner's report and serologist's report respectively. P.W.9 is the Judicial Magistrate, who, on receipt of Ex.P.10 (requisition) to examine the witnesses, examined P.Ws.1 to 5 under section 164 of the Code and recorded their statements. He issued summons to those witnesses and they are Exs.P.11 to P.15. Ex.P.16 is the statement of P.W.3 and Exs.P.2 to P.5 are the statements of other witnesses. P.W.8 had participated in the mediation between the accused and the deceased. He knew them well. Once or twice he had mediated between the accused and the deceased. However, since they went on quarrelling, he advised a complaint being lodged in the All Women Police Station. P.W.7 witnessed the arrest of the accused as spoken to by P.W.13 and the recovery as already referred to in the evidence of P.W.12. P.W.6 is the Village Administrative Officer. At 9.15 a.m on 21.07.2003 when he was in his office, his office assistant came and informed him that the victim in this case had been murdered by her husband. Accordingly, sending an information to the Thasildar, P.W.6 proceeded to the crime scene, where, he observed the dead body. He witnessed the preparation of Ex.P.6, the observation mahazar and the various recoveries made from the crime scene under Ex.P.7 as already referred to in the evidence of P.W.13. P.W.13 continued his investigation further by examining witnesses and recording their statements. P.W.14 succeeded P.W.13, who, after verifying the investigation already done and by collecting the final opinion from the Doctor, filed the final report in court against the accused under section 302 I.P.C.

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8. When the accused was questioned under section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he denied each and every circumstance put up against him as false and contrary to facts. As noted earlier, neither oral nor documentary evidence was brought before court at his instance. Learned counsel appearing for the appellant would contend that P.W.2 is a child witness and therefore caution must be in the mind of the court while her evidence is analysed and by way of abundant caution, the court would not be committing an error to look for corroboration to the oral evidence of such child witness. Learned counsel for the appellant would submit that admittedly P.W.1 is not in talking terms with the accused and therefore she would have every reason to falsely implicate the accused. Lastly, it is argued by the learned counsel for the appellant that from the materials available on record, it can be concluded that preceding the fatal attack, there was a quarrel and therefore the act of the accused can be brought under section 304 - Part I or 304 - Part II I.P.C., as the case may be. We heard the learned Additional Public Prosecutor on the above points.

9. In the light of the arguments advanced by the learned counsel on either side, we went through the entire materials available on record. Medical evidence shows that the victim in this case died due to homicidal violence. There are two eye witnesses to the crime and they are P.Ws.1 and 2. P.W.1 is the mother of the deceased and mother-in-law of the accused. P.W.2 is the grand daughter of P.W.1 and she is also the daughter of the accused and the deceased. The occurrence took place at about 8.30 a.m on 21.07.2003 just opposite to the house of P.W.1. There are abundant materials to show that the accused was ill-treating his wife all the time and therefore she was totally unhappy. On many occasions, the deceased had gone to her mother's house for stay since, she could not tolerate the cruelty meted out to her by her husband. Local elders have been informed about the attitude of the accused towards his wife. Evidence shows that they tried to mediate once or twice but the accused did not mend his ways. It appears that on an earlier occasion on the advice of the panchayatdars a complaint was given against the accused in the All Women Police Station and on that occasion also the accused had taken law into his own hands by assaulting P.W.1 with a rice pounder. On that, a complaint had come to be given. Of course, the complaints are not on record. P.W.1 had spoken about those complaints. In the absence of those complaints, this court could not verify the correctness of the evidence of P.W.1 given in that regard. As far as the occurrence proper is concerned, there is overwhelming evidence of P.Ws.1 and 2.

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10. We carefully went through the evidence of P.Ws.1 and 2. It shows that the accused went to the house of P.W.1 and called his wife to come along with him to his house. It must be noticed here that the evidence of P.W.1 shows that due to the continued act of cruelty meted out to Kanthamani (since deceassed) by her husband, she was living in the house of P.W.1 at that time. Evidence shows that when the accused called her to follow, she refused and immediately the accused, removing the koduval concealed in his person, attacked her twice resulting in her instantaneous death. In Ex.P.1 there is no mention at all about any quarrel. P.W.2's evidence is very crisp on the issue. This witness had been cross examined and yet, she stood firm in the cross examination done by the defence counsel. Her evidence gets corroboration from the oral evidence of P.W.1. We are not saying that, as a matter of principle, corroboration must be looked for in all cases where a child witness alone is examined. Whether corroboration is necessary or not depends upon the facts of each case. Since a point is raised that for the evidence of the child witness corroboration is necessary, we state that P.W.1's evidence lends full corroboration to the oral evidence of P.W.2. In sum and substance, it establishes the involvement of the accused in attacking his wife. Of course, in the cross examination of P.W.1, the following materials had come out:

> "On the occurrence day, my son-in-law asked my daughter to follow him to his house; I also advised my daughter to go with her husband; there was exchange of words between the spouses; pulling the hands of my daughter, she was asked to follow; even then she refused to go; there was a quarrel between the spouses, which went on for ten minutes and then the accused cut her twice."

Therefore we will have to decide, whether on the above noted materials, could this court extend the benefit of Exception 4 to section 300 I.P.C to the appellant? A careful reading of Exception 4 to section 300 I.P.C clearly shows that the act complained of must be shown to have been committed

> "without pre-meditation";
> "in a sudden fight";
> "in the heat of passion";
> "upon a sudden quarrel";
> "without the offender having taken undue advantage of"; or
> "acted in a cruel or unusual manner".

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From the materials available in this case, it is possible to conclude that there is absence of pre-meditation and the accused appear to have not taken any undue advantage or acted in a cruel or unusual manner. But still, the other three elements referred to above should be satisfied namely, "in a sudden fight"; "in the heat of passion" and "upon a sudden quarrel". "Fight", in our considered opinion, means a "physical fight". Such a physical fight must have triggered the passion of the people involved in the fight. When the passion reaches it's peak, there should be a sudden quarrel and then the act should have been committed. The word "passion" itself means an emotional out-burst / uncontrollable out-burst. The Legislature has pre-fixed the word "passion" with the word "heat". Therefore in our considered opinion, every emotional out-burst by itself would not be sufficient unless the said emotional out-burst is shown to have reached it's peak followed by a sudden quarrel. To reiterate, we state that all the above three elements must be satisfied, besides the other three elements already referred to above to attract Exception 4 to section 300 I.P.C. "Quarrel" as per Oxford Dictionary does contemplate an angry argument or disagreement. The word "fight" is defined to mean in the Oxford Dictionary as "taking part in a violent struggle involving physical force or weapons". Therefore there must be a fight triggering the passion of the parties involved; such passion should reach it's peak leading to a quarrel and then the act must have been committed. Unless these elements, in addition to the other three elements, which we have already referred to above, are satisfied (in this case we have found that the other three elements are satisfied), it is not possible to extend the benefit of Exception 4 to section 300 I.P.C to any convicted person.

11. In this case what all happened is, when the deceased was advised by her mother (P.W.1) to go with her husband/accused, the deceased did not want to go, leading to exchange of words between the spouses and the accused, pulling the hands of his wife, asked her to follow him and even at that stage the deceased refused to go. Evidence shows that there was a quarrel on that. In our considered opinion, the above referred to materials available on evidence does not show that the accused had acted in a sudden fight in the heat of passion upon a sudden quarrel. In other words, we do not find any fight much less a sudden quarrel, which would have made the accused to act in the heat of passion. If we understand the expressions used in Exception 4 to section 300 I.P.C in their ordinary meaning, then, we have no doubt at all that every sundry quarrel cannot be brought under Exception 4 to section 300 I.P.C. What exactly are the words exchanged between the two namely, the accused and the deceased, are not available

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on record. The court would not be in a position to imagine the words that might have or might not have been exchanged between the two, to extend any benefit available in law. Therefore we hold that, on the materials available, Exception 4 to section 300 I.P.C is not attracted. As a result of our discussion and finding that the conviction of the accused is based on legal evidence, we confirm the judgment under challenge by dismissing the appeal.

Vsl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The District Sessions Judge, Salem
2.The District Collector, Salem
3.The Director General of Police, Chennai
4.The Public Prosecutor, High Court, Madras - 104
5.The Superintendent, Central Prison, Coimbatore
6.The Inspector of Police, Mecheri Police Station, Salem

+ one cc to Mr. C. Sairam,Advocate sr no. 23376

bv(cO)
nm(29.06.07)

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